AM	MENDMENT NO	Calendar No
Pu	urpose: In the nature of a substi	tute.
IN	THE SENATE OF THE UNITED S	STATES-112th Cong., 2d Sess.
	H.R. 24	71
То	to clarify that a video tape a consumer's informed, write basis and that consent may Internet.	service provider may obtain ten consent on an ongoing
R	Referred to the Committee on ordered to be	
	Ordered to lie on the table	e and to be printed
A	AMENDMENT IN THE NATURE O to be proposed by	
Viz	Z:	
1	Strike all after the enacti	ng clause and insert the fol-
2	lowing:	
3	TITLE I—VID	EO PRIVACY
4	PROTE	CTION
5	SEC. 101. SHORT TITLE .	
6	This title may be cited as	the "Video Privacy Protec-
7	tion Act Amendments Act of 2	012".

1	SEC. 102. VIDEO PRIVACY PROTECTION ACT AMENDMENT.
2	Section 2710(b)(2) of title 18, United States Code,
3	is amended by striking subparagraph (B) and inserting
4	the following:
5	"(B) to any person with the informed, written
6	consent (including through an electronic means
7	using the Internet) of the consumer that—
8	"(i) is in a form distinct and separate from
9	any form setting forth other legal or financial
10	obligations of the consumer;
11	"(ii)(I) is given at time the disclosure is
12	sought; or
13	"(II) is given in advance for a set period
14	of time or until consent is withdrawn by the
15	consumer; and
16	"(iii) the video tape service provider has
17	provided an opportunity, in a clear and con-
18	spicuous manner, for the consumer to withdraw
19	on a case-by-case basis or to withdraw for ongo-
20	ing disclosures;".
21	TITLE II—ELECTRONIC
22	COMMUNICATIONS PRIVACY
23	SEC. 201. SHORT TITLE.
24	This title may be cited as the "Electronic Commu-
25	nications Privacy Act Amendments Act of 2012".

1	SEC. 202. CONFIDENTIALITY OF ELECTRONIC COMMUNICA-
2	TIONS.
3	Section 2702(a)(3) of title 18, United States Code,
4	is amended to read as follows:
5	"(3) a provider of remote computing service or
6	electronic communication service to the public shall
7	not knowingly divulge to any governmental entity
8	the contents of any communication described in sec-
9	tion 2703(a), or any record or other information
10	pertaining to a subscriber or customer of such serv-
11	ice.".
12	SEC. 203. ELIMINATION OF 180-DAY RULE; SEARCH WAR-
13	RANT REQUIREMENT; REQUIRED DISCLO-
14	SURE OF CUSTOMER RECORDS.
1415	sure of customer records. (a) In General.—Section 2703 of title 18, United
15	(a) In General.—Section 2703 of title 18, United
151617	(a) In General.—Section 2703 of title 18, United States Code, is amended by striking subsections (a), (b),
151617	(a) In General.—Section 2703 of title 18, United States Code, is amended by striking subsections (a), (b), and (c) and inserting the following:
15 16 17 18	(a) In General.—Section 2703 of title 18, United States Code, is amended by striking subsections (a), (b), and (c) and inserting the following: "(a) Contents of Wire or Electronic Commu-
15 16 17 18 19	(a) In General.—Section 2703 of title 18, United States Code, is amended by striking subsections (a), (b), and (c) and inserting the following: "(a) Contents of Wire or Electronic Communications.—A governmental entity may require the dis-
15 16 17 18 19 20	(a) In General.—Section 2703 of title 18, United States Code, is amended by striking subsections (a), (b), and (c) and inserting the following: "(a) Contents of Wire or Electronic Communications.—A governmental entity may require the disclosure by a provider of electronic communication service
15 16 17 18 19 20 21	(a) In General.—Section 2703 of title 18, United States Code, is amended by striking subsections (a), (b), and (c) and inserting the following: "(a) Contents of Wire or Electronic Communications.—A governmental entity may require the disclosure by a provider of electronic communication service or remote computing service of the contents of a wire or
15 16 17 18 19 20 21 22 23	(a) In General.—Section 2703 of title 18, United States Code, is amended by striking subsections (a), (b), and (c) and inserting the following: "(a) Contents of Wire or Electronic Communications.—A governmental entity may require the disclosure by a provider of electronic communication service or remote computing service of the contents of a wire or electronic communication that is in electronic storage with
15 16 17 18 19 20 21 22 23 24	(a) In General.—Section 2703 of title 18, United States Code, is amended by striking subsections (a), (b), and (c) and inserting the following: "(a) Contents of Wire or Electronic Communications.—A governmental entity may require the disclosure by a provider of electronic communication service or remote computing service of the contents of a wire or electronic communication that is in electronic storage with or otherwise stored, held, or maintained by the provider

1 State warrant procedures) that is issued by a court of

- 2 competent jurisdiction directing the disclosure.
- 3 "(b) Notice.—Except as provided in section 2705,
- 4 not later than 3 days after a governmental entity receives
- 5 the contents of a wire or electronic communication of a
- 6 subscriber or customer from a provider of electronic com-
- 7 munication service or remote computing service under sub-
- 8 section (a), the governmental entity shall serve upon, or
- 9 deliver to by registered or first-class mail, electronic mail,
- 10 or other means reasonably calculated to be effective, as
- 11 specified by the court issuing the warrant, the subscriber
- 12 or customer—
- "(1) a copy of the warrant; and
- 14 "(2) a notice that includes the information re-
- 15 ferred to in clause (i) and (ii) of section
- 16 2705(a)(4)(B).
- 17 "(c) Records Concerning Electronic Commu-
- 18 NICATION SERVICE OR REMOTE COMPUTING SERVICE.—
- "(1) IN GENERAL.—Subject to paragraph (2), a
- 20 governmental entity may require a provider of elec-
- 21 tronic communication service or remote computing
- service to disclose a record or other information per-
- taining to a subscriber or customer of the provider
- or service (not including the contents of communica-
- 25 tions), only if the governmental entity—

1	"(A) obtains a warrant issued using the
2	procedures described in the Federal Rules of
3	Criminal Procedure (or, in the case of a State
4	court, issued using State warrant procedures)
5	that is issued by a court of competent jurisdic-
6	tion directing the disclosure;
7	"(B) obtains a court order directing the
8	disclosure under subsection (d);
9	"(C) has the consent of the subscriber or
10	customer to the disclosure; or
11	"(D) submits a formal written request rel-
12	evant to a law enforcement investigation con-
13	cerning telemarketing fraud for the name, ad-
14	dress, and place of business of a subscriber or
15	customer of the provider or service that is en-
16	gaged in telemarketing (as defined in section
17	2325).
18	"(2) Subpoenas.—A provider of electronic
19	communication service or remote computing service
20	shall, in response to an administrative subpoena au-
21	thorized by Federal or State statute or a Federal or
22	State grand jury or trial subpoena, disclose to a gov-
23	ernmental entity the—
24	"(A) name;
25	"(B) address;

1	"(C) local and long distance telephone con-
2	nection records, or records of session times and
3	durations;
4	"(D) length of service (including start
5	date) and types of service used;
6	"(E) telephone or instrument number or
7	other subscriber number or identity, including
8	any temporarily assigned network address; and
9	"(F) means and source of payment for
10	such service (including any credit card or bank
11	account number), of a subscriber or customer of
12	such service.
13	"(3) Notice not required.—A governmental
14	entity that receives records or information under
15	this subsection is not required to provide notice to
16	a subscriber or customer.".
17	(b) Technical and Conforming Amendments.—
18	Section 2703(d) of title 18, United States Code, is amend-
19	ed—
20	(1) by striking "A court order for disclosure
21	under subsection (b) or (c)" and inserting "A court
22	order for disclosure under subsection (c)"; and
23	(2) by striking "the contents of a wire or elec-
24	tronic communication, or".

1	CEC	00.4	DELAYED NOTICE	
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2	Section 2705 of title 18, United States Code, is
3	amended to read as follows:
4	"§ 2705. Delayed notice
5	"(a) Delay of Notification.—
6	"(1) In general.—A governmental entity that
7	is seeking a warrant under section 2703(a) may in-
8	clude in the application for the warrant a request for
9	an order delaying the notification required under
10	section 2703(a) for a period of not more than 90
11	days.
12	"(2) Determination.—A court shall grant a
13	request for delayed notification made under para-
14	graph (1) if the court determines that there is rea-
15	son to believe that notification of the existence of the
16	warrant may result in—
17	"(A) endangering the life or physical safety
18	of an individual;
19	"(B) flight from prosecution;
20	"(C) destruction of or tampering with evi-
21	dence;
22	"(D) intimidation of potential witnesses; or
23	"(E) otherwise seriously jeopardizing an
24	investigation or unduly delaying a trial.
25	"(3) Extension.—Upon request by a govern-
26	mental entity, a court may grant 1 or more exten-

1	sions of the delay of notification granted under para-
2	graph (2) of not more than 90 days.
3	"(4) Expiration of the delay of notifica-
4	TION.—Upon expiration of the period of delay of no-
5	tification under paragraph (2) or (3), the govern-
6	mental entity shall serve upon, or deliver to by reg-
7	istered or first-class mail, electronic mail or other
8	means reasonably calculated to be effective as speci-
9	fied by the court approving the search warrant, the
10	customer or subscriber—
11	"(A) a copy of the warrant; and
12	"(B) notice that informs the customer or
13	subscriber—
14	"(i) of the nature of the law enforce-
15	ment inquiry with reasonable specificity;
16	"(ii) that information maintained for
17	the customer or subscriber by the provider
18	of electronic communication service or re-
19	mote computing service named in the proc-
20	ess or request was supplied to, or re-
21	quested by, the governmental entity;
22	"(iii) of the date on which the warrant
23	was served on the provider and the date or
24	which the information was provided by the
25	provider to the governmental entity;

1	"(iv) that notification of the customer
2	or subscriber was delayed;
3	"(v) the identity of the court author-
4	izing the delay; and
5	"(vi) of the provision of this chapter
6	under which the delay was authorized.
7	"(b) Preclusion of Notice to Subject of Gov-
8	ERNMENTAL ACCESS.—
9	"(1) In general.—A governmental entity that
10	is obtaining the contents of a communication or in-
11	formation or records under section 2703 may apply
12	to a court for an order directing a provider of elec-
13	tronic communication service or remote computing
14	service to which a warrant, order, subpoena, or other
15	directive under section 2703 is directed not to notify
16	any other person of the existence of the warrant,
17	order, subpoena, or other directive for a period of
18	not more than 90 days.
19	"(2) Determination.—A court shall grant a
20	request for an order made under paragraph (1) if
21	the court determines that there is reason to believe
22	that notification of the existence of the warrant,
23	order, subpoena, or other directive may result in—
24	"(A) endangering the life or physical safety
25	of an individual;

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1	"(B) flight from prosecution;
2	"(C) destruction of or tampering with evi-
3	dence;
4	"(D) intimidation of potential witnesses; or
5	"(E) otherwise seriously jeopardizing an
6	investigation or unduly delaying a trial.
7	"(3) Extension.—Upon request by a govern-
8	mental entity, a court may grant 1 or more exten-
9	sions of an order granted under paragraph (2) of
10	not more than 90 days.".